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S.L., Appellant)	
)	
and)	Docket No. 10-2174
)	Issued: July 15, 2011
U.S. POSTAL SERVICE, POST OFFICE,)	
Bellmawr, NJ, Employer)	
)	

Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

¹ 5 U.S.C. § 8101 *et seq.*

the elbows, which left her with pain for the last month. OWCP accepted her claim for right cubital tunnel syndrome.

On January 5, 2009 OWCP received appellant's December 29, 2008 schedule award claim. Appellant submitted an August 6, 2008 evaluation from Dr. Arthur Becan, an orthopedic surgeon. She complained of right elbow pain and stiffness, which waxed and waned, as well as numbness and tingling and swelling in her right elbow. Semmes-Weinstein monofilament testing revealed diminished light touch sensibility involving the ulnar nerve distribution of the right forearm and hand.

Dr. Becan diagnosed, among other things, chronic right ulnar neuropathy and chronic medial epicondylitis of the right elbow. Noting a grade 2 sensory deficit of the right ulnar nerve, he found a total right upper extremity impairment of six percent, citing Table 16-10 and Table 16-15 of the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).²

On March 23, 2009 OWCP medical adviser observed that Dr. Becan's grading of the sensory loss seemed incorrect. He noted that the maximum ulnar nerve sensory loss below the mid-forearm was 35 percent, and that grade 2 could be as much as 80 percent: "How did he get [six percent]?" OWCP medical adviser also noted that the reported two-point discrimination represented a zero percent loss: "This would really be a normal sensation for the ulnar nerve [and] not a [g]rade [2] [l]oss." OWCP medical adviser concluded that Dr. Becan had to explain how he determined a six percent impairment for ulnar nerve loss.

On June 15, 2009 OWCP asked Dr. Becan to evaluate appellant's right upper extremity impairment using the sixth edition of the A.M.A., *Guides*. On December 15, 2009 it received his October 8, 2009 report. Based on his previous findings, Dr. Becan found that appellant fit into the moderate category of impairment for sensory only peripheral nerve injury, and therefore had a three percent impairment of her right upper extremity.³ OWCP's medical adviser reviewed his evaluation and reported that it seemed correct.

On February 25, 2010 OWCP issued a schedule award for a three percent impairment of appellant's right upper extremity. On June 16, 2010 OWCP's hearing representative affirmed.

On appeal, appellant's representative argues that OWCP's delay in adjudicating the claim deprived appellant of a protected interest in property without due process of law. He reasoned that, had the delay not occurred, appellant would have been provided a decision under the fifth edition of the A.M.A., *Guides*.

² A.M.A. *Guides* (5th ed. 2001).

³ *Id.* at Table 15-18 (6th ed. 2009).

LEGAL PRECEDENT

Section 8107 of FECA⁴ authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.⁵ As of May 1, 2009, any decision regarding a schedule award must be based on the sixth edition.⁶

ANALYSIS

Appellant's representative does not contest the percentage of impairment awarded on February 25, 2010. He contests OWCP's delay in issuing a decision and the resulting application of the sixth edition of the A.M.A. *Guides*. OWCP procedures are clear: As of May 1, 2009, any decision regarding a schedule award must be based on the sixth edition. OWCP correctly followed its procedures.

Appellant asserts that she has property right in a schedule award benefit under the fifth edition of the A.M.A., *Guides* and a protected property interest cannot be deprived without due process, citing *Goldberg v. Kelly*, 397 U.S. 254 (1970) and *Mathew v. Eldridge*, 424 U.S. 319 (1976). These cases held only that a claimant who was in receipt of benefits (in *Goldberg* public assistance and in *Mathews* Social Security benefits) could not be terminated without due process. Appellant had received no schedule award under the fifth edition.

In *Harry D. Butler*,⁷ the Board noted that Congress delegated authority to the Director regarding the specific methods by which permanent impairment is to be rated. Pursuant to this authority, the Director adopted the A.M.A., *Guides* as a uniform standard applicable to all claimants and the Board has concurred in the adoption.⁸ On March 15, 2009 the Director exercised authority to advise that as of May 1, 2009 all schedule award decisions of the Office should reflect use of the sixth edition of the A.M.A., *Guides*.⁹ The applicable date of the sixth edition is as of the schedule award decision reached. It is not determined by either the date of maximum medical improvement or when the claim for such award was filed

The Board finds that OWCP did not deprive appellant of an established property interest. Consistent with its procedures, OWCP applied the correct edition of the A.M.A., *Guides* and found on February 25, 2010 that appellant was entitled to benefits for a three percent impairment

⁴ Appellant also complained of left shoulder pain and stiffness and popping.

⁵ 20 C.F.R. § 10.404.

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.0808.6.a (January 2010).

⁷ 43 ECAB 859 (1992).

⁸ *Id.* at 866.

⁹ FECA Bulletin No. 09-03 (issued March 15, 2009). FECA Bulletin was incorporated in the Federal (FECA) Procedure Manual, *supra* note 6, Chapter 2.808.6(a) (January 2010).

of her right upper extremity.¹⁰ The Board will therefore affirm OWCP's June 16, 2010 decision affirming appellant's schedule award.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that OWCP applied the correct edition of the A.M.A., *Guides*.

ORDER

IT IS HEREBY ORDERED THAT the June 16, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 15, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹⁰ A moderate sensory-only deficit of a peripheral nerve represents a three percent impairment of the upper extremity. A.M.A., *Guides* 429 (6th ed. 2009) (Table 15-18). OWCP medical adviser incorrectly stated that the maximum ulnar nerve sensory loss below the mid-forearm was 35 percent. It is seven percent. A.M.A., *Guides* 492 (5th ed. 2001) (Table 16-15). So the maximum grade 2 sensory deficit of 80 percent would have produced the 6 percent impairment Dr. Becan reported. A.M.A., *Guides* 482 (Table 16-10). Semmes-Weinstein monofilament testing revealed only diminished light touch, indicative of a lower-grade sensory deficit. This inconsistency diminished the probative value of Dr. Becan's impairment rating under the fifth edition.